



AS No. 101 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 08.12.2025

PRONOUNCED ON : 11.02.2026

CORAM

**THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

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1. Ponnammal (Died)
2. Chinnammal (Died)
3. Kannammal (Died)
4. Jayanthi
5. Suresh Kumar
6. Kandasamy
7. Boopathi
8. Shanthi

(Appellants 6 to 8 brought on record as LRs of the deceased 2nd Appellant viz., Chinnammal vide court order dated 17/06/2019 made in CMP 8318/2019 in AS 101 of 2012.)

9. T.Saraswathi
- 10.Rathinam

(Appellants 9 & 10 brought on record as LRs of the deceased 1st Appellant viz., Ponnammal



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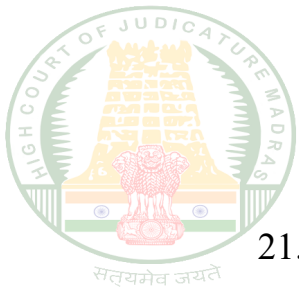
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vide court order dated 27.04.2023 made in CMP Nos.9944 to 9946 of 2023 in AS 101 of 2012.)

..Appellant(s)

Vs

1. T.K.Kandhaswamy (Died)
2. Rukmani
3. K.Selvapriya
4. T.K.Muthurajan
(R2 to R4 brought on record as LR's of the deceased sole respondent viz., T.K.Kandhaswamy vide court order dated 17/06/2019 made in CMP 8301/2019 in AS 101 of 2012.)
5. T.Marappan
(5th Respondent impleaded vide Order Of Court Dated 16/03/2023 in CMP.No.102 of 2023 In As.No.101 of 2012.)
6. Anith Ms
(R3 DIED, R6 BROUGHT ON RECORD AS LRS OF DECEASED 3RD RESPONDENT VIZ, K.SELVAPRIYA, VIDE ORDER OF COURT DATED 08/06/2023 MADE IN CMP.NOS.9948,9950 AND 9954/2023 IN AS. NO.101 OF 2012.)
(Cause title accepted vide order of Court dated



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21.02.2012 made in MP No.1 of 2012 in

A.S.Sr.No.16260 of 2012)

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..Respondent(s)

For Appellant(s): Mr.P.Valliappan Senior Counsel
for Mr.S.M.S.Sriram Narayanan

For Respondent(s): Mr.N.Manokaran For R2, R4 and R6
Mr.Gautham S.Raman
for M/s.K.V.Law Firm for R5

JUDGMENT

(Judgment of the Court was delivered by C.V.Karthikeyan J.)

The first and second defendants and the legal representatives of the third defendant have filed the present appeal suit challenging the judgment dated 12.09.2011, in O.S.No.78 of 2009, on the file of the Principal District Court, Namakkal.

2.The suit in O.S.No.78 of 2009 had been filed by the respondent T.K.Kandhaswamy seeking the relief of specific performance of an agreement dated 10.06.2006 and directing the defendants to execute a registered sale deed after receiving the balance sale consideration of



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Rs.55,06,300/- in his favour with respect to the suit property and in default, for the Court to execute the sale deed in his favour. The suit was decreed by judgment dated 12.09.2011 necessitating filing of the present appeal.

3. Pending appeal, the first and second appellants died and their legal representatives were impleaded as 6th to 10th appellants. The sole respondent T.K.Kandhaswamy also died and his legal representatives were impleaded as 2nd to 4th respondents. The third respondent also died and her legal representative was impleaded as 6th respondent.

4. During the pendency of the appeal, the 5th respondent T.Marappan was impleaded by an order of the Hon'ble Supreme Court in Civil Appeal No.63 of 2015, by an order dated 06.01.2015. The Hon'ble Supreme Court had however stated that such impleadment was without prejudice to the rights of the parties in the appeal to agitate all questions of law that may be open to them. Further, it was also directed that the High Court should not permit the nature and character of the original pleadings to be altered in any manner.



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5.O.S.No.78 of 2009 - Principal District Court, Namakkal.

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The plaintiff T.K.Kandhaswamy stated that the defendants Ponnammal, Chinnammal and Kannammal who are the daughters of late Vellappa Gounder had entered into an agreement of sale with him on 10.06.2006 with respect to the suit properties for a total consideration of Rs.20,90,000/- per acre. The total area of the property agreed to be conveyed was 4.07 acres. It had been further contended that an advance sale consideration of Rs.12,00,000/- had been paid on the date of agreement. The time for execution was fixed before the last day of Ippasi month, namely, on or before 16.11.2006. It was further contended that possession had been handed over on the date of agreement itself. It was further contended that the properties had to be measured and the sale deed would be executed in favour of the plaintiff after producing all original and ancient documents. It had been further contended that a further advance of Rs.18,00,000/- had been paid and this was endorsed on the back side of the sale agreement itself. It was therefore contended that the defendants have totally received a sum of Rs.30,00,000/- towards the sale consideration as advance.

6.It was further contended that the defendants executed a General Power of Attorney on 23.06.2006 and it was stipulated that this Power of



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Attorney would be valid till the agreement is performed. The Power of

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Attorney was also notarised. The defendants however issued a notice on 14.04.2007 that they had cancelled the said Power of Attorney. The plaintiff contended that he was always ready and willing to pay the balance sale consideration of Rs 55,06,300/- at Rs. 20,90,000/- per acre for a total area of land being 4.07 acres. The plaintiff further contended that he had approached the defendants to execute the sale deed, but they were always evading. The plaintiff issued a reply notice stating the correct facts. He also stated that there was another suit filed in O.S.No.652 of 2003 before the Sub Court, Namakkal. The plaintiff then issued a registered notice on 30.04.2009 calling upon the defendants to execute the sale deed on 15.05.2009 between 10.00 a.m. and 3.00 p.m. at the Sub Registrar's office at Tiruchengode after receiving the balance sale consideration. But the defendants did not come forward to execute the sale deed and issued a reply on 05.05.2009 raising various contentions. It was under those circumstances that the suit had been filed seeking specific performance of the agreement dated 10.06.2006.

7.The third defendant filed a written statement admitting to the agreement dated 10.06.2006 and also admitting to the receipt of the



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advanced sale consideration of Rs.12,00,000/-. It was however stated that

the entire balance of the sale consideration should have been paid before the

last day of Ippasi month according to the Tamil calendar of the year 2006.

The claim of the plaintiff that possession was handed over was however

denied. The defendant also admitted receipt of the further advance sale

consideration of Rs.18,00,000/-. It was further stated that the three

defendants were not having any male support and under those circumstances

had executed a General Power of Attorney in favour of the plaintiff. It was

stated that the plaintiff had instituted several suits as Power of Attorney

agent of the defendants, which were not to the best interest of the

defendants. Therefore, they had taken a decision to cancel the Power of

Attorney. It was further contended that the plaintiff was never ready and

willing to pay the balance sale consideration. It was also stated that efforts

were made by Mediators to settle the issue, but the plaintiff never came

forward to pay the balance sale consideration. In the meanwhile, notices

were exchanged between the parties. It was stated that the plaintiff did not

come forward to perform his part of the agreement within the time

stipulated. The period stated in the agreement elapsed. The claim of the

plaintiff that he had called upon the defendants to come forward to execute



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the sale deed was denied. It was stated that the plaintiff was not entitled for specific performance and it was therefore contended that the suit should be dismissed.

8. The written statement of the third defendant was adopted by the first and second defendants. The third defendant filed an additional written statement contending that though the plaintiff had stated that he had issued a notice dated 30.04.2009, there was no date mentioned in the said notice. It was further contended that the plaintiff had suppressed the reply notice issued by the defendants. It was stated that the suit was filed two months after that particular date. It was further contended that the family members of the two brothers of the defendants, Rathnam and Sengottuvel had conveyed the suit properties without any right or title to Marappan by sale deed dated 20.12.2006. With respect to that sale deed, the plaintiff had filed O.S.No.58 of 2007 as Power of Attorney agent of the defendants before the Sub Court at Namakkal. It was therefore contended that the suit was bad for non joinder of necessary parties and therefore should be dismissed on that ground also.



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9.A reply statement was filed by the plaintiff claiming that the suit properties do not belong to the brothers of the defendants and therefore, the sale in favour of Marappan is of little consequence and can be ignored. It was also contended that Marappan was not a necessary party to the suit.

10.On the basis of the said pleadings, the following issues and additional issues were framed.

1.Whether the plaintiff is entitled to specific performance of the agreement dated 10.06.2006?

2.Whether the plaintiff was ready and willing to perform his part of the contract dated 10.06.2006?

3.Whether the time is essence of the contract?

4.To what relief if the plaintiff is entitled to?

11.Additional Issues framed on 10.11.2010

1.Whether the properties absolutely belonged to defendants 1 to 3 above?

2.Whether the suit is bad for non joinder of necessary party Marappan?



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12. During trial, the plaintiff examined himself as PW 1 and marked

Exs.A1 to A23. Ex.A1 was the agreement of sale dated 10.06.2006 and Ex.A2 was the endorsement in the agreement of sale dated 15.07.2006. Ex.A4, A5, A8 and A12 were notices exchanged between the parties. Ex.A13 (series), Ex.A14 and A15 (Series) were copies of pattas. On the side of the defendants, the first defendant examined herself as DW1 and examined another witness as DW2. The defendants marked Exs.B1 to B7. Exs.B1, B2, B3 and B4 were notices exchanged between the parties. Ex.B6 dated 20.12.2006 was the sale deed executed in favour of Marappan. During trial, Ex.X1 dated 16.05.1990, which was a sale deed executed in favour of the plaintiff was also marked.

13. The learned Principal District Judge, Namakkal, first took up for consideration issue Nos.1, 2 & 3. The fact that the agreement and the receipt of the advance sale consideration and the receipt of the additional advance sale consideration had been admitted by the defendants was noted. It was also noted that the time fixed for performance of the agreement was the last date of Ippasi Month of the year 2006. The argument of the defendants that time was the essence of the contract was also noted. The further arguments



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that the plaintiff was not ready and willing to perform his part of the agreement was also noted. The learned Trial Judge further noted Ex.A6 which was the copy of the plaint in O.S.No.652/2003 which was a suit for partition filed by the family members of the brothers of the defendants. The copy of I.A.No.1662/2023 in the said suit, which was marked as Ex.A7 was also noted and that it was observed that injunction was granted on 11.08.2003. It was observed that though injunction had been granted, the defendants had suppressed the factum of the pending suit and had entered into the agreement. It was also observed that the plaintiff had been in possession of the suit property. The undertaking of the parties to lay roads was also noted by the learned Trial Judge. It was held that time was not the essence of the contract and that the defendants had also consented to lay roads and divide the land into plots. It was further observed that substantial amount had been paid by the plaintiff. The documents Exs.A.13 to Ex.A15 patta in the name of the plaintiff and his family members and documents were noted and Exs.A19 to A21 were also noted, which revealed that the plaintiff was running transport business and having three vehicles. It was therefore held that the plaintiff has sufficient means to pay the balance sale consideration. In view of this reason, it was finally held that the plaintiff



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was entitled for specific performance of the agreement and that time was not the essence of the contract.

14. With reference to the contention in additional issues 1 and 2 regarding non joinder of the purchaser of the property, it was held that the defendants alone were the title holders of the property and nobody else had title to convey the property and therefore, the sale deed in favour of Marappan would not convey any right, title or interest. It was therefore held that Marappan was not a necessary party to the suit. Finally, the suit was decreed granting specific performance of the agreement.

15.A.S.No.101 of 2012:

Challenging the said judgment and decree, the defendants filed the present appeal.

16. Even before the appeal could be presented, the third defendant died and her legal representatives were impleaded as 4th and 5th appellants. During the pendency of the appeal, the first and second appellants also died and their legal representatives were impleaded as sixth to tenth appellants.



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17. The respondent also died and his legal heirs were impleaded as second to fourth respondents. The third respondent also died and her legal heir was also impleaded as sixth respondent. The purchaser Marappan was impleaded as the fifth respondent by the orders of the Hon'ble Supreme Court as stated above.

18. Mr. P. Valliappan, learned Senior Counsel appearing on behalf of the appellants took the Court through the facts of the case. The learned Senior Counsel pointed out that the agreement between the plaintiff and the defendants was dated 10.06.2006. The learned Senior Counsel contended that the agreement had been admitted and receipt of advance sale consideration of Rs.12,00,000/- was also admitted by the appellants. The receipt of further additional sale consideration of Rs.18,00,000/- was also admitted. The learned Senior Counsel however contended that the respondent was never ready and willing to perform his part of the agreement. The sale consideration was determined as Rs.20,90,000/- per acre. The total area of land was 4.07 acres. The balance sale consideration payable was Rs.55,06,300/-. The learned Senior Counsel pointed out that it was the appellants who had issued notice on 14.04.2007 to the plaintiff. The



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plaintiff did not come forward to pay the balance sale consideration to perform his part of the agreement. In this connection, the learned Senior Counsel further pointed out that the parties had specifically mentioned that the performance should be completed before the end of Ippasi month according to the Tamil Calendar of the year 2006. The learned Senior Counsel pointed out that the appellants/defendants, at the time they entered into agreement had necessity to sell the property. But later, the respondent/plaintiff had taken advantage of their position as ladies without male support and had delayed the payment of balance sale consideration waiting for the value of the property to increase. In this connection, the learned Senior Counsel pointed out that the first legal notice issued by the respondent was on 30.04.2009, nearly three years after the date of agreement. The appellants had issued a reply notice on 05.05.2009. The learned Senior Counsel stated that it was the respondent who delayed in performing his part of the agreement in paying balance sale consideration. Eventhough many documents had been filed during the trial, the learned Senior Counsel pointed out that the respondent had failed to produce necessary evidence to show that he was possessed with balance sale consideration and that he was willing to pay the balance sale consideration.



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19.The learned Senior Counsel also pointed out Ex.B5, copy of the
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plaint in O.S.No.352/2008 filed by the appellants before the Sub Court,
Tiruchengode, seeking a declaration that the sale deed in favour of
Marappan was null and void and for consequential reliefs. This suit had
been filed by the respondent in his capacity as Power of Attorney agent of
the appellants.

20.The learned Senior Counsel contended that the respondent had
failed to establish that he was ready and willing to perform his part of the
sale agreement and that he had not explained the reasons for the delay in
coming forward to pay the balance sale consideration or even in instituting
the suit. The learned Senior Counsel therefore contended that the appeal
should be allowed and the judgment and decree of the Trial Court should be
set aside.

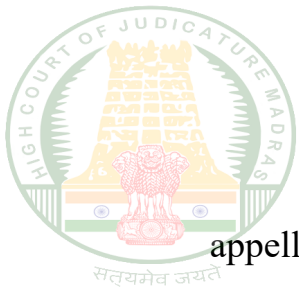
21.Mr.N.Manokaran, learned counsel for the first respondent/plaintiff
however contested and disputed the arguments advanced on behalf of the
appellants. The learned counsel pointed out that the agreement had been
admitted, the receipt of the advance sale consideration had been admitted,



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and the receipt of the additional advance sale consideration had also been admitted. The learned counsel contended that in such circumstances, the Court should direct specific performance. He contended that the appellants had also appointed the first respondent as Power of Attorney agent. In the meanwhile, the family members of the brothers of the appellants had sold the suit schedule property to the fifth respondent Marappan. This necessitated the first respondent to file O.S.No.352/2008 before the Sub Court, Tiruchengode, as Power of Attorney agent, seeking a declaration that the said sale deed was null and void. The learned counsel contended that Marappan is neither a necessary party nor a proper party to the suit. He also contended that the sale deed in favour of Marappan has to be rejected as the vendor had no right, title or interest over the property to convey the same. He further contended that the first respondent had produced necessary documents to show possession of the properties, to show purchase of other properties, to also show that he was running transport business. These documents have been considered in their proper light by the learned Trial Judge and it was very specifically held that the first respondent was possessed with necessary funds to purchase the suit property. The learned counsel also stated that there was also a counter obligation on the part of the



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appellants to measure the suit property. He stated that the first respondent

had called upon the appellants to come to the Sub Registrar's Office and execute the sale deed, but however they failed to do so. The learned counsel stated that these supervening circumstances were responsible for the delay in instituting the suit and claimed that it was not owing to the respondents, but rather owing to the fact that the appellants were never bonafide in coming forward to execute the sale deed. The learned counsel therefore contended that the appeal should be dismissed and the judgment of Trial Court should be upheld.

22.Mr.Gautham S.Raman, learned counsel for the fifth respondent pointed out that the fifth respondent had purchased the property from the family members of the appellants herein for valuable sale consideration. He contended that the fifth respondent had also been put in possession. He further contended that the fifth respondent had been impleaded by the directions of the Hon'ble Supreme Court, wherein permission was granted to raise all legal issues. He contended that the sale agreement between the appellants and the first respondent stood obliterated owing to the sale deed executed in favour of the fifth respondent. The agreement was sham and



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neither party was willing to perform their obligations under the said agreement. The learned counsel stated that substantial interest had devolved on the fifth respondent. He also contended that a separate suit had also been instituted by the fifth respondent seeking declaration of title. The learned counsel contended that the appeal should be dismissed, and that this Court should declare the agreement between the appellants and the first respondent as impossible of performance and should uphold the title of the fifth respondent.

23. We have carefully considered the arguments advanced and perused the materials on record. The following points arise for consideration under Order 41 rule 30 CPC:

(i) whether specific performance can be granted of the agreement dated 10.06.2006?

(ii) whether specific performance should be denied owing to the alleged laches on the part of the first respondent?

(iii) whether the first respondent had established readiness and willingness to part with the sale consideration?



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*(iv) whether any right, title had been granted
in favour of the fifth respondent over the suit
schedule property?*

Since all the points framed for consideration have to be addressed by examining the oral and documentary evidence adduced by the parties, which evidence is interlinked, all the points are taken up for consideration and answered together.

24.The first respondent T.K.Kandhaswamy had entered into an agreement of sale dated 10.06.2006 with the 1st, 2nd and 3rd appellants, Ponnammal, Chinnammal and Kannammal, who were all sisters and daughters of late Vellappa Gounder with respect to the suit schedule property to purchase the same at the rate of Rs.20,90,000/- per acre. The total area of the property was 4.07 acres. This agreement had been admitted by the appellants. At the time of entering into the agreement of sale, an advance sale consideration of Rs.12,00,000/- had been paid. The receipt of this advance sale consideration had also been admitted by the appellants. Thereafter, a further advance of Rs.18,00,000/- had been paid on 15.07.2006. The receipt of this additional sale consideration had also been admitted by the appellants.



25. The learned counsel for the first respondent Mr.N.Manokaran placed reliance on the judgment of the Hon'ble Supreme Court reported in 2022 (7) SCC page 384, *R.Ramasubbamma Vs. V.Vijayalakshmi and ors*, wherein in a similar circumstances where there was an admission of the agreement and receipt of the advance sale consideration, the Hon'ble Supreme Court had held as follows:

5.2 Considering the fact that original defendant No. 1 – vendor – original owner admitted the execution of agreement to sell dated 12.04.2005 and even admitted the receipt of substantial advance sale consideration, the learned Trial Court decreed the suit for specific performance of agreement to sell dated 12.04.2005. Once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to be proved by the plaintiff – vendee. Therefore, as such the learned Trial Court rightly decreed the suit for specific performance of agreement to sell. The High Court, was not required to go into the aspect of the execution of the agreement to sell and the payment/receipt of substantial advance sale consideration, once the vendor had specifically



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admitted the execution of the agreement to sell and receipt of the advance sale consideration; thereafter no further evidence and/or proof was required.

26.The learned counsel placed reliance on the said dictum and contended that in the instant case, there has been admission of the agreement and also receipt of the advance sale consideration and the additional sale consideration, and therefore no further evidence or proof was required and specific performance must be granted. The learned counsel therefore contended that the learned Trial Judge had correctly decreed the suit.

27.However, Mr.P.Valliappan, learned Senior Counsel on behalf of the appellants pointed out the time taken by the respondent to come forward to perform his part of the obligation of payment of balance sale consideration. The learned Senior Counsel widened the scope of arguments by pointing that the agreement was dated 10.06.2006, and the parties had expressly contended and agreed and stipulated that time was the essence of the agreement and that breach would result in forfeiture of the advance and if the appellants were not to come forward to execute the sale deed, then the respondent should file a suit for specific performance after depositing the



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balance sale consideration into the Court. The learned Senior Counsel pointed out that since deceased first respondent had never come forward to deposit the balance sale consideration within the stipulated time. He therefore contended that specific performance should not be granted since the agreement had lapsed by efflux of time. He further pointed out that the agreement had been entered into only because the appellants were in need, at the time of execution of sale agreement, of financial assistance. But however, the first respondent taking advantage of their position had protracted the payment of the balance sale consideration. The learned Senior Counsel therefore contended that in view of the fact that the first respondent had not come forward to pay the balance sale consideration, specific performance ought not to have been granted by the learned Trial judge and therefore argued that the appeal should be allowed.

28.However, we are constrained to point that there were further intervening circumstances which had occurred during the pendency of the agreement. It is to be noted that a suit had been filed and injunction had been granted not to deal with the property. Copy of the plaint in O.S.No.652 of 2023 was marked as Ex.A6 and the copy of the injunction application in



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I.A.No.1662/2003 was marked as Ex.A7. Injunction to deal with the property was granted on 11.08.2003. It was pointed that this suit was pending till the year 2013. It is thus seen that till the year 2013, the first respondent had a reasonable explanation for not paying the balance sale consideration. But that he was possessed of the balance sale consideration is evident from the documents filed by him, namely, Ex.A13 (series), A14 and A15 (series) which reflected possession of properties. The first respondent had also filed Ex.A16, A17 and A18 which relate to renewal of permit for running transport business. The registration certificate of the vehicles had also been marked as Ex.A19, 20 & 21. The learned Trial Judge had placed reliance on the said documents to come to a conclusion that the first respondent was indeed possessed of funds.

29.A perusal of the facts revealed that the first respondent had paid a total advance of Rs.30,00,000/- to the appellants and therefore, a conclusion cannot be drawn that the first respondent was not possessed of funds. It is also to be noted that in the meanwhile, the family members of the brothers of the appellants had sold the property to the fifth respondent by sale deed dated 20.12.2006. This is a substantial intervening circumstance, which



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necessitated the first respondent to file O.S.No.352 of 2008 before the Sub Court, Tiruchengode. A copy of the plaint had been marked as Ex.B5. He had sought a declaration that the sale deed was null and void. Therefore, the suit property was mired with litigation.

30. We hold that these are plausible reasons for the first respondent to withhold the payment of balance sale consideration. But however, it must also be noted that he had issued a legal notice in Ex.B3 dated 30.04.2009 very specifically calling upon the appellants to come over to the Sub Registrar's Office at Tiruchengode on 15.05.2009 between 10.00 a.m. and 3.00 p.m. and execute the sale deed. The appellants had issued a reply on 05.05.2009 under Ex.A12 = Ex.B4. They had however avoided going over to the Sub Registrar's office to execute the sale deed.

31. *In 2002 (8) SCC 146 Nirmala Anand vs Advent Corporation Pvt.*

Ltd. & Ors, It had been held as follows:

“6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary



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to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be



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caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.”

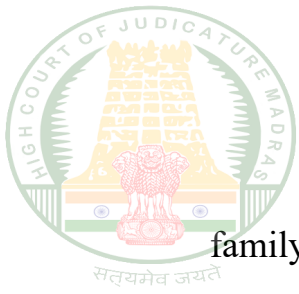
The dictum laid is when once discretion had been exercised granting specific performance, it may not be appropriate to interfere with the same unless it is specifically proved that one party is taking undue advantage. In the instant case, while examining who is the defaulting party, it must be kept in mind that the first respondent had paid substantial advance of Rs.30,00,000/- which had been admitted by the appellants. The appellants had not disclosed that an injunction order was prevailing in a suit filed seeking partition and separate possession. The suit was pending and injunction had also been granted. The first respondent therefore had a reason for withholding the payment of balance sale consideration as any conveyance would be subject to the result of the said suit. Further, the family members of the brothers of the appellants had conveyed the property to the fifth respondent. This sale deed was executed on 20.12.2006 within just six months from the date of the agreement of the sale in favour of the



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first respondent. This is a substantial circumstance which the first respondent had to contend with and therefore, he had to institute a suit in O.S.No.352/2008 before the Sub Court, Tiruchengode on 27.02.2007 within two months from the date of the sale deed seeking a declaration that the sale deed was null and void. He had instituted the suit as power of attorney agent of the appellants. Therefore, it is clear that the first respondent had taken all required steps to protect the agreement in his favour and to assert the rights which he had obtained. We hold that the defaulting party therefore are the appellants who, after having received the advance sale consideration of Rs.30,00,000/- and having admitted the said receipt had not come forward to execute the sale deed.

32.The learned Senior Counsel for the appellants insisted that the Court should examine the delay from the date of agreement till the date of institution of the suit. But however, the reasons are available in the documents filed and the evidence adduced. There was a suit for partition which had been filed and injunction had also been granted against the appellants from dealing with the property and inspite of the order of injunction, they had entered into the agreement of sale. Thereafter, the

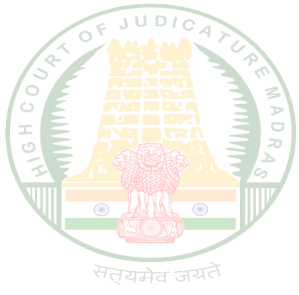


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family members of the brothers of the appellants had sold the property to the fifth respondent necessitating the first respondent to institute the suit seeking declaration that the sale deed is null and void. These suits were pending. Therefore, the fact that there has been delay can never be placed against the first respondent. In these circumstances, it can never be stated that the time is the essence of the agreement.

33. The fifth respondent had been impleaded by the directions of the Hon'ble Supreme Court. It had however been held that arguments should be advanced only on the existing pleadings and no further additional pleadings could be introduced. The fifth respondent had purchased the property from the family members of the brothers of the appellants and it is the case of the appellants and also of the first respondent that the vendors did not have any right or interest to convey the property. It is also seen that the fifth respondent had instituted a suit for declaration of title. The first respondent as Power of Attorney agent had also instituted the suit seeking that the sale deed should be declared as null and void. We are of the considered view that the learned Trial Judge had examined all necessary factors before exercising discretion to grant specific performance of the agreement of sale.

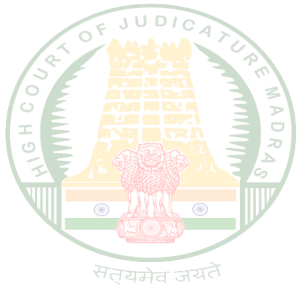


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WEB COPY 34. We hold that the judgment of the Trial Judge does not require any interference and we therefore dismiss the appeal with costs. The judgment and decree of the Principal District Court, Namakkal, dated 12.09.2011, passed in O.S.No.78 of 2009 is confirmed. Consequently, connected miscellaneous petitions, if any, are also closed.

(C.V.K.,J) (K.B.,J)
11.02.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
sli
To
The Principal District Court,
Namakkal.



WEB COPY



AS No. 101 of 2012

C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.

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Pre-delivery Judgment in

AS No. 101 of 2012

11.02.2026

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